

**STATE OF MAINE
SUPREME JUDICIAL COURT**

ADMINISTRATIVE ORDER JB-07-1 (A. 11-08)

ESTABLISHMENT OF THE BUSINESS AND CONSUMER DOCKET

Effective: November 17, 2008

I. SCOPE AND PURPOSE

The Business and Consumer Docket (BCD) shall be a statewide docket comprised of selected actions involving business and/or consumer disputes, and shall be managed by two judges from either trial court designated by the Chief Justice of the Supreme Judicial Court.

The goals of the BCD are to provide predictable judicial action in selected cases involving business and/or consumer disputes, avoid placing unnecessary burdens on the court and the litigants in such cases, keep litigation costs reasonable, and promote an effective and efficient process for resolving such disputes.

Cases that may be considered for transfer to the BCD are jury and nonjury civil actions and family matters that do not involve children, in which

- (a) the principal claim or claims involve matters of significance to the transactions, operations or governance of a business entity and/or the rights of a consumer arising out of transactions or other dealings with a business entity, and
- (b) the case requires specialized and differentiated judicial management.

The foregoing includes pending and new civil and family actions filed in either the District Court or the Superior Court.

II. IMPLEMENTATION AND OPERATION OF THE BCD

The BCD judges designated by the Chief Justice are authorized to organize and implement the BCD in consultation with the Supreme Judicial Court, and

authorized actions taken by them in this pursuit prior to the effective date of this Administrative Order are hereby ratified.

III. PILOT RULES

The pilot rules for the BCD, to be known as the Maine Rules of Business and Consumer Docket Procedure (M.R. BCD P.) or BCD Procedural Rules, are promulgated by the Supreme Judicial Court as part of this Order and attached hereto as Appendix A.

IV. APPLICATION/RECOMMENDATION FOR TRANSFER TO THE BCD

Pursuant to the BCD Procedural Rules, any party may submit an application requesting and any District Court Judge or Superior Court Justice may recommend that a case be transferred to the BCD.

V. PLACEMENT ON/REMOVAL FROM THE BCD

The decision to accept or reject a case for transfer to the BCD shall be within the sole discretion of the BCD judge reviewing the transfer application or recommendation. The decision shall be made summarily, without hearing, and shall not be subject to review or appeal.

In the exercise of such discretion, the BCD judge may consider, but shall not be bound by, the following:

- (a) The location of the court in which the case is pending;
- (b) The number of separately represented parties;
- (c) The number and nature of pretrial motions filed or expected to be filed;
- (d) Any novel and/or complex legal issues;
- (e) The number of witnesses;
- (f) The nature and amount of documentary evidence;
- (g) The need to coordinate the case with related actions pending in one or more courts in other counties, states or countries, or in a federal court;
- (h) The need for on-going judicial supervision; and
- (i) Any other factor(s) which warrant placement on the BCD.

If a case is transferred to the BCD, it shall be randomly assigned to a BCD judge, who need not be the judge who reviewed the application or recommendation for transfer to the BCD. Except as otherwise authorized by the BCD judge or a Trial Court Chief, all matters pertaining to the case will be handled by the assigned BCD judge, which assignment shall continue until terminated.

In instances where the assigned BCD judge determines that placement on the BCD is no longer appropriate for a particular case, that judge has the sole discretion to transfer a case from the BCD back to the docket of the transferring court. The decision shall be made summarily, without hearing, and shall not be subject to review or appeal.

VI. REVIEW

The Supreme Judicial Court shall conduct, or cause to be conducted, a periodic review of the BCD, including its purpose, goals, and operations, and shall make and implement such further recommendations as it deems appropriate under the circumstances.

For the Court,

/s

Leigh I. Saufley
Chief Justice

Date: November 4, 2008

Historical Derivation of JB-07-1 and Appendix A

A.O. JB-07-1 Establishment Of The Business And Consumer Docket

Effective June 1, 2007, Dated: May 9, 2007

Signed by: Leigh I. Saufley, Chief Justice, Maine Supreme Judicial Court

APPENDIX A TO JB-07-1 (A. 11-08)

**PILOT RULES
BUSINESS AND CONSUMER DOCKET PROCEDURAL RULES
Effective: November 17, 2008**

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PROCEDURAL RULE 1-CITATION, PURPOSE, SCOPE, AND OTHER RULES

1.1 Citation to Procedural Rules. These Rules shall be known as the Maine Rules of Business and Consumer Docket (“BCD”) Procedure or the BCD Procedural Rules. They may be cited as “M.R. BCD P. ____.”

1.2 Purpose and Scope. The BCD Procedural Rules are established to promote the purpose and goals of the BCD set out in this Administrative Order, and to facilitate the proceedings of all cases placed on the BCD.

1.3 Integration with Other Rules. The BCD Procedural Rules supplement and modify the Maine Rules of Civil Procedure and family matter rules, which unless so modified are applicable to cases on the BCD, consistent with the purpose and goals of the BCD.

PROCEDURAL RULE 2–CASE FILING, ASSIGNMENT, TRACKING, AND IDENTIFICATION

2.1 Filing Cases. No case may be filed on the BCD unless it has been approved by a BCD judge for transfer to the BCD.

2.2 Application to Transfer to BCD. Any party seeking to transfer a case to the BCD shall complete and file, with the transferring court, an application to transfer the case to the BCD using an approved BCD form and setting forth the reasons in support of a transfer. An application to transfer may be made at any time and more than one party may join in the application.

2.3 Judicial Recommendation for Transfer to BCD. At any time after all named defendants have appeared or been defaulted, any trial judge or justice may *sua sponte* file, in the transferring court, a recommendation to transfer a case to the BCD, setting forth the reasons in support of a transfer.

2.4 **Objection to Transfer to BCD.** Any party objecting to the application of a party or recommendation of a trial judge or justice to transfer a case to the BCD shall file a written objection, no more than 2 pages in length, setting forth the specific reasons for the objection. An objection shall be deemed waived unless filed with the transferring court within 14 days of the filing of the application to transfer; provided, however, if an application is filed with the initial complaint, the written objection must be filed no later than the objecting party's answer or other response to the complaint or that party's deadline for filing such answer or other response, whichever first occurs. No reply to the objection shall be permitted.

2.5 **Decision to Allow Transfer to BCD.** The decision to accept or reject a case for transfer to the BCD shall be within the sole discretion of the BCD judge reviewing the transfer application. The decision shall be made summarily, without hearing, unless the BCD judge concludes that a hearing is necessary.

2.6 **Transfer to BCD.** If a case is ordered transferred to the BCD, the case file shall be transferred forthwith from the transferring court to the BCD. The transfer shall be effective when the order of transfer is signed by the BCD judge.

2.7 **BCD Docket Number.** When a case is ordered transferred to the BCD, it shall be assigned a BCD docket number that will replace the docket number assigned to the case by the transferring court.

2.8 **Return to the Transferring Court.** In the event that a party joined in an action after it has been transferred to the BCD objects to the transfer, that party may, within 14 days of being joined in the action, file a written objection to the transfer, no more than 2 pages in length, setting forth the specific reasons for the objection. No reply to the objection shall be permitted. The BCD judge shall decide whether the objection should be sustained or overruled and, if sustained, the case shall be transferred to the transferring court. The decision shall be made summarily, without hearing. If the case is ordered transferred from the BCD to the transferring court, the transfer shall be effective when the order of transfer is signed by the BCD judge.

2.9 **Transfer Orders are not Subject to Review or Appeal.** Parties shall not have the right to a review or appeal of decisions regarding the transfer of a case to or from the BCD.

PROCEDURAL RULE 3–CASE MANAGEMENT

3.1 Case Management Conference. After the transfer of a case to the BCD, the court will issue an order scheduling a case management conference to define the future course of proceedings in the case. The order will, at a minimum, identify the issues to be addressed at the conference, the deadlines to be established at the conference, and the responsibilities of the parties in advance of the conference.

3.2 Mandatory Attendance. All unrepresented parties and all lead trial counsel and local counsel for each represented party shall attend the case management conference in person unless attendance by other means is authorized for any person by the court.

3.3 BCD Scheduling Order. At the completion of the case management conference, the court shall enter a scheduling order setting deadlines for the joinder of additional parties, the exchange of expert witness designations and reports, the completion of discovery, participation in Alternative Dispute Resolution, and the filing of motions. In the scheduling order, the court shall also schedule the matter for trial and address any other matters relevant to the future course of proceedings in the case, including, where appropriate, an opportunity for a Judicially Assisted Settlement Conference. The scheduling order may thereafter be modified or revised, as the court in its discretion, deems necessary or appropriate, to meet the purpose and goals of the BCD. The parties shall not deviate from deadlines and requirements established in the scheduling order or any modifications unless authorized by the court. Failure to comply with the scheduling order may result in sanctions.

3.4 Existing Scheduling Orders. When standard or modified scheduling orders have been entered in the transferring court, regardless of whether the orders were entered pursuant to Maine Rules of Civil Procedure 16 or 16A, those orders shall be superseded by any scheduling orders or modifications entered after the case is transferred to the BCD.

PROCEDURAL RULE 4–DISCOVERY

4.1 Presumptive Discovery Limits. Unless otherwise authorized by the provisions of the BCD scheduling order, each party may serve upon any other party no more than

- (a) one set of interrogatories, consisting of no more than 30 interrogatories, including all subparts;
- (b) one request for production of documents, consisting of no more than 30 requests, including all subparts;
- (c) one request for admissions, consisting of no more than 20 requests, including subparts; and
- (d) no more than 5 notices of deposition or subpoenas for deposition for persons other than experts.

PROCEDURAL RULE 5–MOTION PRACTICE

5.1 Motion Hearings. Unless otherwise ordered by the court, motions that do not require testimonial evidence shall be considered and decided by the court, without hearing or oral argument, based on the motion filings, the pleadings, admissible appropriate record evidence, the court’s file, and memoranda.

PROCEDURAL RULE 6–JOINT FINAL PRETRIAL STATEMENT

6.1 Conference of Parties. Not later than 60 days prior to either the trial date or the first day of the trial session established in the scheduling order, all parties shall confer for the purpose of discussing, agreeing upon, preparing, and signing and filing a joint final pretrial statement in conformity with the requirements of this Procedural Rule. The filing of the joint final pretrial statement constitutes a representation to the court by all of the parties that they or their representatives at the meeting were fully vested to discuss and agree upon all of the matters set forth in paragraph 6.2, below, that they have in fact discussed and attempted in good faith to reach agreement on each of those matters, and that the case is ready for trial.

6.2 Joint Final Pretrial Statement. The joint final pretrial statement shall include the following, which will be considered by the court at the pretrial conference and may be incorporated into a pretrial order issued by the court:

- (a) stipulated facts;
- (b) all factual issues in dispute;
- (c) all legal issues;
- (d) each party's list of exhibits;
- (e) each party's list of witnesses;
- (f) each party's list of experts;
- (g) depositions, or portions thereof, to be used in lieu of live testimony;
- (h) estimated length of trial;
- (i) subject matter of potential motions in limine;
- (j) proposed jury instructions; and
- (k) proposed verdict form.

6.3 Deadline for Filing Joint Final Pretrial Statement. The parties shall file the joint final pretrial statement no later than 45 days prior to either the trial date or the first day of the trial session established in the scheduling order. The plaintiff shall have primary responsibility for coordinating the meeting between the parties and filing the joint final pretrial statement and related material. If the plaintiff is unable to timely comply with this requirement, plaintiff shall notify the court in writing of the reasons therefor and request a status conference.

PROCEDURAL RULE 7–PRETRIAL CONFERENCE

7.1 Pretrial Conference. A pretrial conference shall be held no later than 15 days prior to either the trial date or the first day of the trial session established in the scheduling order, unless otherwise ordered by the court. At the pretrial conference, all parties must be prepared and authorized to discuss the following matters:

- (a) all matters contained in the joint final pretrial statement;
- (b) the formulation and simplification of the trial issues;
- (c) the elimination of unsupported claims or defenses;
- (d) the admission of facts and documents to avoid unnecessary proof;
- (e) stipulations to the authenticity of documents;
- (f) requests for advance rulings from the court on

- (i.) the admissibility of evidence; and
- (ii.) the disposition of pending motions;
- (g) the establishment of time limits for presenting evidence and argument;
- (h) the estimated length of trial;
- (i) motions in limine;
- (j) settlement and the use of special procedures to assist in resolving the dispute; and
- (k) such other matters as may facilitate the just, speedy, and inexpensive disposition of the case.

7.2 **Mandatory Attendance.** All unrepresented parties and all lead trial counsel and local counsel for each represented party must attend the pretrial conference in person.

7.3 **Pretrial Order.** Following the pretrial conference, the court shall issue a pretrial order which shall control the course of the trial.

PROCEDURAL RULE 8–TRIAL

8.1 **Trial Date.** The trial shall commence on the date established in the scheduling order, unless otherwise ordered by the court.

8.2 **Trial Location.** The trial will be held in the geographic area of the court of original venue unless (a) the court approves another location upon the agreement of the parties, or (b) the court determines that unusual circumstances, including scheduling requirements, warrant conducting the trial at another location.

8.3 **Continuances.** Any request to continue a trial date must strictly comply with Maine Rule of Civil Procedure 40. The court will not grant continuances based upon the unavailability of a witness in circumstances where the matter may be resolved by securing the agreement of the other parties or an order of the court concerning alternative methods for the presentation or admission of evidence. Because the purpose and goals of the BCD include providing predictable judicial action and promoting an effective and efficient process for resolving such disputes, continuances are disfavored and the granting of continuances shall be considered the exception and not the rule.

PROCEDURAL RULE 9 – ELECTRONIC NOTICE BY THE COURT

9.1 Electronic Notice. Any notice required or permitted to be given by the court in any matter assigned to the BCD shall be served electronically (a) on all attorneys representing parties having matters assigned to the BCD, except as otherwise provided in BCD Procedural Rule 9.10, and (b) on all parties appearing without counsel, who consent in writing to electronic service of all notices, as provided in these Rules.

9.2 Consent to Electronic Notice. A party appearing without counsel or an attorney who has previously filed a certification to the court, pursuant to BCD Procedural Rule 9.10, may apply to a BCD judge to receive electronic service of all notices from the court. The application shall be made on an approved BCD form and, if granted, shall constitute the consent of that party or attorney to receive, and an order of the court thereafter requiring, electronic service of all notices by the court on that party or attorney.

9.3 Definition. “Electronic Service” means the electronic transmission of a notice by the court to an attorney or consenting unrepresented party under these rules. Electronic service does not include service of process or summons by any party to gain jurisdiction over persons or property.

9.4 Electronic Mail Address. It is the responsibility of all attorneys and consenting unrepresented parties to (a) assure that their correct electronic mail addresses are on file with the court and that they are operational, (b) timely monitor their electronic mail service for notices from the court, and (c) promptly notify the court of any change to their electronic mail addresses.

9.5 Text Format. All electronic notifications shall be transmitted in plain text.

9.6 Completion of Service. Service of electronic notice shall be complete when transmitted, presumed to have been received by the intended recipient, and shall have the same legal effect as an original paper document.

9.7 Electronic Service Undeliverable. If service is made to the recipient’s most current electronic mail address on file with the court and returned as undeliverable, the notice will then be served by regular mail; provided, however, any time period countable from the completion of service of notice shall be based upon the service of the electronic notice.

9.8 Time Periods. Unless prohibited by court rule or statute, any time period prescribed for exercising any right, performing any duty, doing any act or making any response after service of notice, shall be countable from the day that the notice is served electronically, except that this provision shall not affect any date-certain deadline or deadlines prescribed in the notice.

9.9 Hardcopies of Notices. Hardcopy versions of all electronic notifications shall be maintained and available at the BCD Clerk's Office at 147 New Meadows Road, West Bath, ME 04530.

9.10 Alternate Service of Notice. When service of any notice is required or permitted to be given by the court (a) to any party appearing without counsel who has not consented to electronic service of notices or (b) to any attorney who has certified in writing to the court that the attorney does not have and cannot acquire an electronic mail address, service shall be given in paper form pursuant to the Maine Rules of Civil Procedure or in such other manner as ordered by the Court.

9.11 Electronic Filing. These rules do not require or authorize the electronic filing of documents, exhibits or other items. Electronic filing may be authorized on a case-by-case basis pursuant to an order of the BCD judge assigned to the case.